club, but argued, as he does here, that he was not a retail dealer in liquors within the statutes and that his failure to pay the tax was not willful.

ARGUMENT

1. Petitioner attacks the sufficiency of the evidence supporting his conviction (Pet. 8–22), asserting that Miss Erickson conducted a private concession in his club and that she, as an independent contractor, was the dealer required to pay the tax. The opinion of the court below details the pertinent facts which support the trial court's determination that petitioner, not Miss Erickson, was the retail liquor dealer, and knowingly failed to pay the tax (Pet. App. A 2–4). Although Miss Erickson testified that she had conducted a private concession, the trial judge discredited her testimony. On cross-examination, she said "* * * I was the only employee, or the only worker, I mean" (Tr. 247). The remainder of her story, as the court below noted (Pet. App. A 3), was highly improbable. The evaluation of this evidence was a matter for the judge, as the trier of fact. *United States* v. *Creek*, 403 F. 2d 220 (C.A. 6); *Butzman* v. *United States*, 205 F. 2d 343 (C.A. 6), certiorari denied, 346 U.S. 828. The record as a whole fully supports the trial court's conclusion that petitioner controlled Miss Erickson's activities, owned some of the liquor dispensed, and was the dealer obligated to pay the tax.

There is similarly ample evidence in support of the trial court's conclusion that petitioner's failure to

pay the required tax was willful. The court found that petitioner's business records were altered to reflect Miss Erickson's purported status as an independent contractor during the period covered by the indictment (Tr. 382–383). In addition, petitioner's prior experience in the liquor business indicates, as the court inferred, that he knew of the federal tax requirements. See *Orloff* v. *United States*, 153 F. 2d 292 (C.A. 6); see also *United States* v. *Dryden*, 423 F. 2d 1175 (C.A. 5), certiorari denied, 398 U.S. 950. On these facts the court was justified in holding that petitioner willfully failed to pay the tax.

2. Petitioner further argues (Pet. 22–23) that his prosecution for failure to comply with 26 U.S.C. 5121 (a) and 5142(a) violated his Fifth Amendment right against self-incrimination. Petitioner did not raise this contention in either the trial court or the court of appeals, and thus may be deemed to have waived it; in any event, it is without merit. The courts of appeals have uniformly ruled that the statutory scheme of taxing liquor is a genuine revenue raising program, and is not unconstitutional as requiring self-incrimination. *E.g.*, *United States* v. *Fricano*, 416 F. 2d 434 (C.A. 2); *United States* v. *Hunt*, 419 F. 2d 1 (C.A. 3), certiorari denied, 397 U.S. 1016; *United States* v. *Walden*, 411 F. 2d 1109 (C.A. 4), certiorari denied, 396 U.S. 931; *United States* v. *Dryden*, *supra*; *United States* v. *Whitehead*, 424 F. 2d 446 (C.A. 6).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
WILL WILSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
PETER A. CHAPIN,
Attorneys.

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